



Dolphin Swim Tour Application

Port Phillip Bay Limited Permit Area

The Conservation Regulator is inviting applications for Dolphin Swim Tour Permits in the Port Phillip Bay Limited Permit Area.

A maximum of four permits will be made available for the period between **1 November 2020** to **30 June 2025**.

Permits will be allocated via a competitive process.

Application checklist

(please tick)

- | | |
|--|--------------------------|
| 1. Applicant details complete (see Part 3) | <input type="checkbox"/> |
| 2. Applicant declaration signed (see Part 4) | <input type="checkbox"/> |
| 3. Response to the Assessment Criteria attached (see Part 5) | <input type="checkbox"/> |

Lodging Applications

Completed applications (form and all supporting documents) must be submitted to wildlifelicensing@delwp.vic.gov.au by no later than 2:00pm **8 October 2020**.

Emails must be marked in the subject line as: CONFIDENTIAL DOLPHIN SWIM TOUR PERMIT APPLICATION.

All files must be in provided in PDF format. Written responses to the Assessment Criteria must be no longer than 40 pages (excluding supporting documents). All supporting documents should be clearly referenced to specific assessment criteria.

Late and/or incomplete applications may not be considered. Faxed or hard copy applications cannot be accepted.

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Dolphin Swim Tour Application

Part 1 – Introduction

Dolphin swim tours are centred around a small resident population of dolphins in Port Phillip Bay. Permits are subject to a range of conditions to minimise the impacts of these activities on the local dolphin population which are outlined in the *Wildlife (Marine Mammals) Regulations 2019* and the permit conditions.

For more information on the restrictions that apply to Whale (Dolphin) Swim Tour Permits, please see Attachment 2 (Permit Conditions) or visit www.wildlife.vic.gov.au.

To view the provisions of the *Wildlife Act 1975* and the *Wildlife (Marine Mammal) Regulations 2019*, please visit www.legislation.vic.gov.au.

How many permits are available?

A total of four permits will be available within the Port Phillip Bay Limited Permit Area. The Conservation Regulator is under no obligation to issue all four permits.

Where can dolphin swim tours be conducted?

Dolphin swim tours are restricted to the Port Phillip Bay (Whale) Dolphin Swim Tour Limited Permit Area (Attachment 1). Dolphin swim tours must not be conducted outside of this area.

What is the cost of the permit?

The fees for Dolphin Swim Permits are prescribed in the *Wildlife (Marine Mammal) Regulations*. Fees will be calculated on a pro-rata basis and the cost of a permit commencing from 1 November 2020 to 30 June 2025 is \$3,054.

Do I need to provide payment with my application?

No. You will only be required to pay if your application is successful. Please do not include payment with your application.

How will applications be assessed?

Applications will be assessed by a panel against the criteria listed in Part 5. Successful applicants will be those that can best demonstrate compliance with the legislative requirements and capability to deliver a service that meets the assessment criteria. Applications will be considered by the Assessment Panel which includes representatives from the Department of Environment, Land, Water and Planning, Parks Victoria, Regional Development Victoria and a cetacean expert. An external Probity Adviser will oversee the deliberations of the evaluation panel to ensure the process is equitable and fair to all applicants.

Can I conduct swim tours with other whale species if I'm successful?

No. Swims tours are only permitted for Common, Burrunan and Bottlenose Dolphins within Port Phillip Bay. It is illegal to conduct swim tours involving any other whale species within the Port Phillip Bay Limited Permit Area.

Will I need Tour Operator Licence if I'm successful?

Yes. All Dolphin Swim Tour Permit holders require a separate Licensed Tour Operator Permit to operate and are required to meet all conditions of their tour operator licence. For more information on these permits, visit www.parks.vic.gov.au.

How will I know if my application is successful or not?

All applicants will be advised in writing of the outcome of their application.

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What happens if I am successful?

Successful applicants will be required to provide copies of appropriate liability insurance documents, a Certificate of Survey as required by the *Marine Act 1988* for the nominated vessel and a Certificate of Competency appropriate to the vessel class, length and operational area as required by the *Marine Act 1988* for all nominated master(s) and crew of the vessel.

Once these documents have been accepted and your payment has been received, a Dolphin Swim Tour Permit will be issued.

The Conservation Regulator will write to successful applicants advising of the required documentation and payment process once the competitive allocation process has been completed.

Are dolphin swim tour permits transferable?

No. Permits are not transferable.

Who can I speak to about the permit or my application?

If you have any queries regarding dolphin swim tour permits or this application process contact the Conservation Regulator on 136 186.

Where can I get more information on other marine mammal tour permits?

For more information on other Marine Mammal Tour Permits (e.g. whale watching tour permits or seal tour permits), please visit www.wildlife.vic.gov.au.

Part 2 – Evaluation Process

Evaluation Process

An assessment panel including representatives from the Department of Environment, Land, Water and Planning, Parks Victoria, Regional Development Victoria and a cetacean expert will consider each application on its merits, against the criteria specified in Part 5. Successful applicants will be those that can best demonstrate compliance with, and capability to meet the assessment criteria.

Evaluation Objective

The selection of suitable operators to provide ecologically sustainable dolphin swim tour operations conducted within a controlled environment in a manner that ensures minimal impact and the protection of dolphin populations in Port Phillip Bay, while promoting tourism and a superior individual tourism experience, in accordance with the *Wildlife (Marine Mammal) Regulations 2019*.

What will the assessment panel be looking for?

Applicants who can provide a service that minimises environmental impact on dolphins, ensures the safety of participants and provides a superior interpretation of wildlife and ecosystem values within Port Phillip Bay.

Applicants must be able to demonstrate:

- A high level of environmental awareness and understanding, including:
 - an understanding of the *Wildlife (Marine Mammal) Regulations 2019*.
 - an understanding of dolphin behaviour and biology;
 - an understanding of dolphin/human interactions including dolphin stress factors;
- A high-level client experience, including:
 - an informative education and interpretation program;
 - a broad-based product i.e. an itinerary and commentary that provides for a broad client experience on the ecology and fauna of Port Phillip Bay, rather than just providing information on dolphins.
- A high standard of service management, delivery including:
 - compliance with regulatory requirements;
 - management oversight; and
 - environmental sustainability and contribution to the environmental values of Port Phillip Bay;

Applicants must have the capacity and resources to deliver the service and the commitment and skills to provide a quality customer service for the entire term of the permit.

Mandatory Requirements

Successful applicants must be able to demonstrate:

1. That they hold current public liability insurance cover to the value of \$10 million with an insurer approved by the Australian Prudential Regulation Authority (APRA). A list of approved insurers can be found on the APRA website (www.apra.gov.au).
2. That the nominated tour vessel and crew meet the requirements of the *Marine Act 1988* and *Marine Regulations 2019* including:
 - valid and up to date Certificate of Survey for nominated tour vessel;
 - current Certificates of Competency for nominated master(s) and crew of the vessel appropriate to the vessel class, length and operational area.

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3. A Licenced Tour Operator Permit issued by Parks Victoria.

These documents do not need to be provided with your application. You will be required to provide these if you are successful. Applications that include this information will not be assessed any differently from those applications that do not.

Assessment Criteria

The Conservation Regulator will have regard to the following evaluation criteria in assessing which applications, if any, represent best value to Victoria. These criteria are not in any order of importance unless otherwise indicated. Criteria are not equally weighted.

A written submission must be provided, with attached supporting documentation where necessary, addressing each of the following criteria:

1. Service offering - the extent to which the applicant meets the functional, operational and performance requirements of the permit in relation to the assessment criteria.
2. Compliance - the applicant's degree of overall understanding of the terms and conditions of the permit and how they will be complied with.
3. Experience and capacity - the applicant's experience in providing services of a similar scope and capacity to provide the service.
4. Environmental values - the applicant's awareness and understanding of the environmental values of Port Phillip Bay and the need to protect and conserve the dolphin population.
5. Environmental sustainability – the applicant's ability to deliver the services in an environmentally sustainable manner.
6. Community benefits – the extent to which the applicant proposed activities contribute to community, social or economic objectives.

Where an applicant has been found guilty of an offence under the *Wildlife Act 1975* or the *Wildlife (Marine Mammal) Regulations 2019*, or a similar offence in another jurisdiction, or has failed to comply with the Act, regulations or conditions of past permits, the application may not be assessed.

As permits are issued to individuals rather than businesses, there is no legal impediment to more than one individual in the same business each having a permit.

However, in deciding whether to grant a Permit to more than one individual in the same business group, the Assessment Panel will consider the potential impact on competition and barriers to market entry, in addition to any other relevant factors.

Please see Part 5 for information on responding to the assessment criteria.

The panel may choose to interview shortlisted applicants or seek further information as part of the assessment process.

Permit Allocation

Applicants may nominate a 'tour supervisor' who will conduct the dolphin swim activities. Tour supervisors are permitted to conduct tours in the absence of the Permit Holder, but the Permit Holder retains accountability for all activities conducted under the permit. Applicants must ensure that such nominees are aware of and understand the relevant regulations and permit conditions.

The permit will only be applicable to the vessel nominated in the application. Should a permit holder seek to nominate a new vessel during the term of the permit, the Conservation Regulator reserves the right to either refuse the request should the vessel provide a significantly different service than what was accepted as part of the initial application and/or impose additional conditions on the permit.

The Conservation Regulator is under no obligation to issue all available permits. Where the number of acceptable applications exceeds the number of permits available, the applicants best able to demonstrate how they will

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conduct the dolphin swim tour in relation to long-term conservation of the dolphins and quality of the ecological interpretive experience will be preferred.

Where the number of acceptable applications is less than the number of permits available, the Conservation Regulator may choose to re-advertise for a new application(s) at a later date or choose not to fill the permit quota.

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Part 3 – Applicant Details

PERSONAL DETAILS					
Mr/Mrs/Ms		First name			
Surname				Date of birth	
Business and/or Trading Name					
BUSINESS ADDRESS					
Street/road name					
City/suburb/town		State		Postcode	
POSTAL ADDRESS					
Street name/PO Box					
City/suburb/town		State		Postcode	
CONTACT DETAILS					
Telephone (business hours)		Email			
Telephone (after hours)		Mobile			
Website					
BUSINESS DETAILS					
Are you registered for GST?	<input type="checkbox"/> Yes <input type="checkbox"/> No				
Australian Business Number (ABN)					
VESSEL DETAILS					
Type of vessel		Registration no.			
Does the vessel nominated above have a valid and current Certificate of Survey?*				<input type="checkbox"/> Yes <input type="checkbox"/> No	
Nominated tour supervisor(s)					
Does the nominated master, tour supervisor and crew of the vessel have Certificates of competency appropriate to the vessel class, length and operational area? *				<input type="checkbox"/> Yes <input type="checkbox"/> No	
Do you have public liability insurance providing not less than \$10 million coverage?*				<input type="checkbox"/> Yes <input type="checkbox"/> No	
Do you possess a current Tour Operator License issued by Parks Victoria?*				<input type="checkbox"/> Yes <input type="checkbox"/> No	

*These documents do not need to be provided with your application. You will be required to provide these if your application is successful.

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Part 4 – Applicant Declaration

PRIOR CONVICTIONS

Have you ever been convicted of any offence under the *Wildlife Act 1975* or the *Wildlife (Marine Mammal) Regulations* (or similar legislation in other states or territories) during the last 10 years? If yes, please provide details below.

Yes <input type="checkbox"/> No <input type="checkbox"/>	Year		State	
Offence				

DECLARATION

I hereby declare that I consent to this information being collected by the Department of Environment, Land, Water and Planning and that all details provided by me are true and correct. I have read and understood the permit conditions as set out in Attachment 3.

I hereby declare that upon being granted a permit I will comply with the conditions of permit.

Signature of applicant	
Date	

Privacy and Data Protection Act 2014

The Department of Environment, Land, Water and Planning (DELWP) is committed to protecting personal information provided by you in accordance with the principles of the Victorian privacy laws. The information you provide will be used to monitor compliance with licence conditions and to provide information about any changes to legislative requirements. Your contact details may also be used by DELWP or its contracted service providers under confidentiality agreements to survey you about your experience with DELWP or to seek feedback related the keeping of wildlife. A licence may not be issued if the information required is not provided. The information you provide will also be made available to any authorised law enforcement agency. You may access the information you have provided to DELWP by contacting the Customer Service Centre on 136 186.

PLEASE REMEMBER TO ATTACH YOUR RESPONSE TO THE ASSESSMENT CRITERIA (SEE PART 5) TO YOUR APPLICATION.

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Part 5 – Assessment Criteria

Applicants should respond to the assessment criteria and attach supporting documentation where required. This information will form the basis of the application evaluation.

Note: Applicants ability to provide the requirements will be assessed using the following information. If the Applicant does not provide this information, they will be judged as not being able to meet the requirements. This is regardless of whether the Applicant claims previous experience in the successful delivery of similar services.

1. Service offering

1.1 Tour details

Provide the following information for the tours you intend to operate should your application be successful:

- a. Port or place of tour departure
- b. Length of tour (hours)
- c. Tours per day
- d. Proposed operating (season) dates
- e. Maximum passenger capacity of vessel
- f. Proposed activities in addition to Dolphin Swims either as standard or contingency (provide draft activity plans or tour itinerary)
- g. Specifications of vessel (provide annotated vessel map or similar, and details of all facilities available on the vessel).
- h. Operating facilities (provide details of the facilities available at the operation base).

1.2 Swim Tour Services

- a. Provide a copy of briefings or information provided to clients about the procedure to be followed during each tour, including safety messages and any warnings about not complying with the tour operator's procedures.
- b. Provide a copy of supporting documentation given to participants and/or displayed on the vessels e.g. brochures, signage or other interpretive information. Specify if any of this material that will also be available in languages other than English.
- c. Detail of how activities will be supervised, including ratios of supervising staff to passengers.
- d. Provide copies of draft forms to be provided to clients prior to departure that will be used to disclose any health conditions and determine suitability of each passenger intending to swim with dolphins. If applicable, provide draft procedures for conducting practice swim before attempting an encounter with marine life.
- e. Provide copies of documentation which demonstrates your understanding of and compliance with Victoria's Child Safe Standards.

2. Compliance

Describe how you will comply with the terms and conditions attached to the Permit including observing the provisions of the *Wildlife Act 1975* and the *Wildlife (Marine Mammal) Regulations 2019*.

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3. Experience and capacity

3.1 Experience

- a. Describe any relevant service and/or experience for all relevant crew that is relevant to your proposed service offering
- b. Provide a copy of qualifications (including first aid and aquatic rescue training) and role of activity staff and/or contractors (or the minimum qualifications required for any position to be recruited).
- c. List any significant safety incidents (involving clients and/or crew) which have occurred over the past five years in relation to any relevant services or experiences listed in 3.1(a) and the resulting mitigation measures put in place.

3.2 Capacity

Provide details of your capacity to provide services of this nature including:

- a. A summary of your business plan including evidence of accreditations/membership held for local and regional tourism industry associations for example, Ecotourism Australia or Quality Tourism Australia.
- b. The extent to which you will provide the Services and the extent to which you will rely on third party organisations and/or sub-contractors to provide the Services. Provide project plan or list of components performed by the parties.
- c. If third parties and/or subcontractors will be used, describe the work they will perform, how you will manage their performance and the length of the professional relationship you have had with them. Provide examples of the way you will monitor the third-parties performance as well as their compliance with the law.
- d. How you will provide services and safety information to specific audiences, including non-English speaking passengers and children.

3.3 Personnel

Describe the processes for ensuring that staff undertake the Services in an appropriate manner, including:

- a. Staff training (including an example copy of training material provided to staff and a summary of the training program for new and existing staff).
- b. Review and staff disciplinary processes (provide a copy of your plan/draft plan for dealing with disciplinary issues).

4. Environmental values

- a. Awareness and understanding of the environmental values of Port Phillip Bay and the potential impacts of tourism on these values.
- b. Details of any measures including policies or operational procedures to minimise disturbance to the dolphins, seals and other marine wildlife beyond regulatory requirements.
- c. Provide a copy of the environmental awareness messages that will be given to clients during dolphin swim tours

5. Environmental sustainability

- a. Provide details of any sustainable practices incorporated into the business, vessel and operations. You may include any supporting documents that demonstrate this.
- b. Provide details of sustainability or environmental accreditations conformed to or held.
- c. Provide details of any relevant qualifications or accreditations held by a staff member(s) that demonstrate an understanding of environmental sustainability and its application to the proposed operations.

6 Community benefits

- a. Describe how you provide a benefit to the community or plan to bring a benefit to the community. These may include social or economic sustainability or any other relevant benefits.

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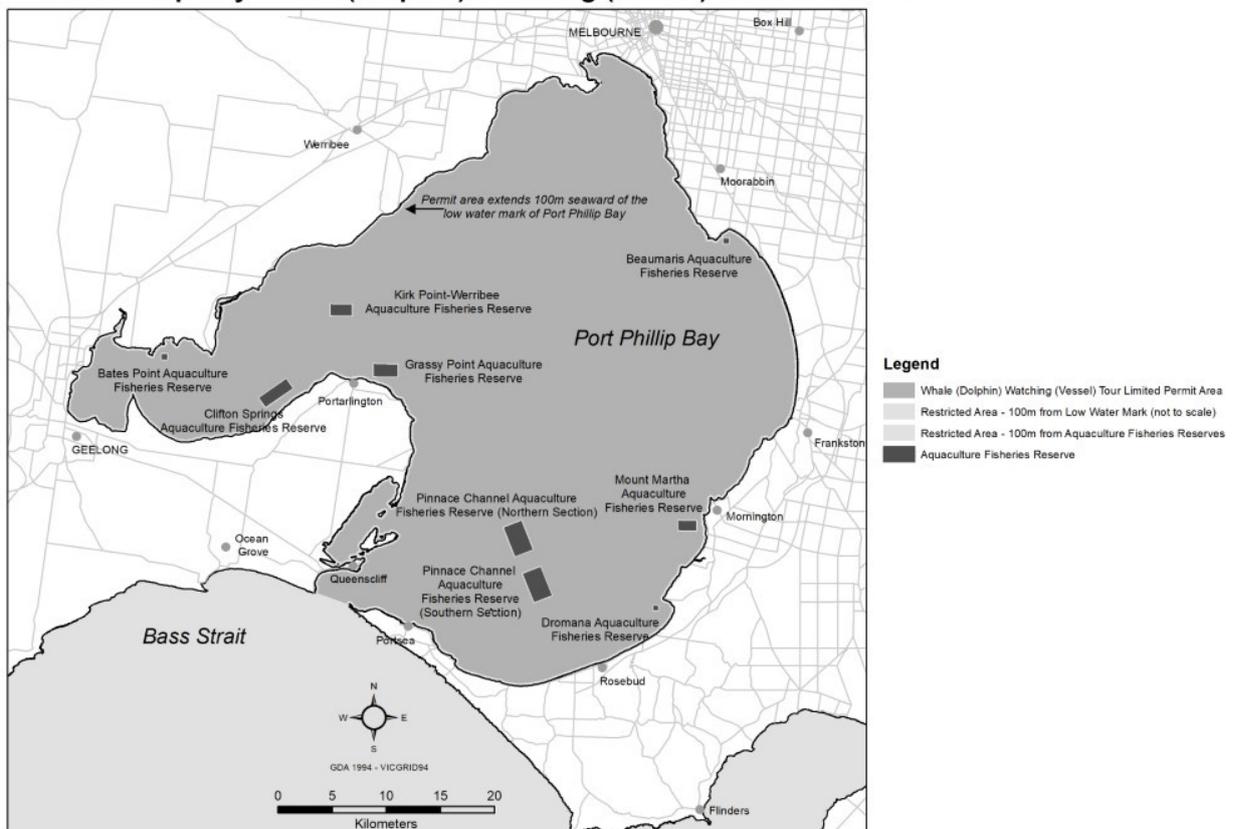
Attachment 1 – Port Phillip Bay Limited Permit Area

The Port Phillip Bay Whale (Dolphin) Swim Tour Limited Permit Area is defined as:

All the waters of Port Phillip Bay that are more than 100 metres seaward of the low water mark of Port Phillip Bay, except for the area described as the Ticonderoga Bay Sanctuary Zone in the *Wildlife (Marine Mammal) Regulations 2019*, and the waters of the following areas that are declared by Order in Council as fisheries reserves for aquaculture purposes under section 88 of *the Fisheries Act 1995*, and published in the Government Gazette on 17 September 2020:

- Grassy Point Aquaculture Fisheries Reserve
- Clifton Springs Aquaculture Fisheries Reserve
- Kirk Point–Werribee Aquaculture Fisheries Reserve
- Bates Point Aquaculture Fisheries Reserve
- Beaumaris Aquaculture Fisheries Reserve
- Mount Martha Aquaculture Fisheries Reserve
- Dromana Aquaculture Fisheries Reserve
- Pinnacle Channel Aquaculture Fisheries Reserve

Port Phillip Bay Whale (Dolphin) Watching (Vessel) Tour Limited Permit Area



Attachment 2 – Permit conditions

Dolphin Swim Permits will have the following minimum conditions. Additional conditions may be considered at the discretion of the Conservation Regulator.

General Conditions

1. The Permit applies only to the “Port Phillip Bay Whale (Dolphin) Swim Tour Limited Permit Area” as proclaimed by the Determination of the Wildlife (Port Phillip Bay Whale (Dolphin) Swim Tour Limited Permit Area) 2020, or any Determination made under section 83F of the *Wildlife Act 1975* that varies or replaces it.
2. The provisions of the *Wildlife Act 1975* and the Wildlife (Marine Mammals) Regulations 2019 or equivalent legislation or regulations must be observed at all times unless otherwise allowed by this permit.
3. An authorised officer may direct a person to cease immediately any activity being carried out under this permit, if the authorised officer reasonably believes that the activity is detrimental to the welfare of any whale.

Prescribed conditions:

Tour services

1. The permit holder must ensure that the requirements of the Wildlife (Marine Mammals) Regulations 2019 and the conditions of the permit are displayed on the permit holder's website.
2. The permit holder must ensure that customers are advised of the requirements of Wildlife (Marine Mammals) Regulations 2019 and the conditions of the permit prior to their tour.
3. The permit holder must, for each tour conducted, provide each customer on the tour, with clear and accurate information on the biology and conservation status of and threats facing each species of marine mammal encountered on the tour.
4. The permit holder must ensure that signs are clearly posted on the tour vessel in places where all passengers on the tour vessel are reasonably likely to see them, advising of the requirements of the Wildlife (Marine Mammals) Regulations 2019 and the conditions of the permit.
5. The permit holder must ensure that before the tour vessel enters the caution zone of a whale, all persons on the tour vessel are verbally advised of the conditions of the permit and the requirements of the Wildlife (Marine Mammals) Regulations 2019.
6. The permit holder must ensure that all customers on the tour vessel, other than an employee of the permit holder, are under the direct supervision of a tour supervisor at all times.*
7. The permit holder must take reasonable steps to ensure that no person on the tour vessel breaches the Wildlife (Marine Mammals) Regulations 2019
8. The permit holder must ensure that no motorised diving or swimming aid is used or allowed to be used within the caution zone of a whale from the tour vessel.

* Condition does not apply in an emergency if human lives are threatened.

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9. The permit holder must ensure that no prohibited vessel is used or allowed to be used within 300 metres of a whale from the tour vessel unless a greater distance is specified in the permit.
10. The permit holder must ensure that any person on the vessel or in the water must not feed or attempt to feed a marine mammal during the tour.

Vessel operations

11. The permit holder must ensure that the tour vessel does not approach within 50 metres of a dolphin or 100 metres of a non-dolphin whale, except when the tour vessel is in a narrow waterway.
12. The permit holder must ensure that when the tour vessel is in a narrow waterway, the tour vessel does not approach within 25 metres of a whale.
13. The permit holder must ensure that when the tour vessel is in a whale sanctuary zone, the tour vessel does not approach within 200 metres of a whale.
14. The permit holder must ensure that when the tour vessel is within the caution zone of a whale, the tour vessel is not within 100 metres of another tour vessel.
15. The permit holder must ensure that if a calf is detected, the tour vessel immediately withdraws to a distance from the calf that is at least—
 - i. 100 metres for a dolphin
 - ii. 200 metres for a non-dolphin whale.
16. The permit holder must ensure that the tour vessel does not remain within the caution zone of any whale for more than a cumulative total of—
 - 60 minutes each tour
 - 120 minutes each day.
17. The permit holder must ensure that the tour vessel does not approach within 100 metres of a whale more than -
 - i. 5 times each whale swim tour; and
 - ii. 10 times each day.
18. The permit holder may not enter the caution zone of a whale if more than two vessels are already within that caution zone, unless it is necessary to ensure safe passage through a narrow waterway.

Conditions within the caution zone of a marine mammal

19. The permit holder must not cause or permit that vessel to -
 - i. approach the marine mammal from head on at an angle less than 30 degrees to its observed direction of travel
 - ii. approach the marine mammal from the rear at an angle less than 30 degrees to its observed direction of travel
 - iii. be in the path ahead of the marine mammal at an angle less than 30 degrees to its observed direction of travel

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20. The permit holder must not cause or allow the vessel to separate any individual marine mammal from a group of marine mammals.
21. The permit holder must not cause or allow the vessel to come between a mother whale and calf.
22. The permit holder must not cause or allow the vessel to pursue a marine mammal.
23. The permit holder must move the vessel at a constant speed that does not exceed 5 knots.
24. The permit holder must avoid sudden changes in speed or direction.
25. The permit holder must ensure that when the tour vessel is within the caution zone of a whale, the tour vessel is not within 100 metres of another tour vessel.
26. The permit holder must manoeuvre the vessel to outside the caution zone if the marine mammal shows any sign of disturbance. The signs include—
 - i. attempts to leave the area or vessel
 - ii. sudden changes in surface behaviour
 - iii. rapid changes in direction or speed of swimming
 - iv. deep dives away from the vessel
 - v. changes in breathing patterns
 - vi. increased time spent under water compared to time spent at the surface
 - vii. changes in acoustic behaviour
 - viii. the onset of aggressive behaviours such as tail slaps or trumpet blows
27. The permit holder must ensure that any person on the vessel or in the water must not dispose of food or waste within the caution zone of a marine mammal.
28. The permit holder must ensure that any person must not touch or attempt to touch a marine mammal.
29. The permit holder must not play back or cause to be played back an underwater sound or a recording of any kind.

Dolphin swims

30. The permit holder must not conduct a dolphin swim within a whale sanctuary zone.
31. The permit holder must not conduct a dolphin swim if a calf is present.
32. The permit holder must ensure that if a dolphin swim has commenced and a calf is detected—
 - i. all persons involved in the whale swim immediately reboard the tour vessel; and
 - ii. the tour vessel remains in neutral gear until the calf is at least 100 metres from the vessel for a dolphin calf.
33. The permit holder must not conduct a dolphin swim if signs of mating are detected. This includes -
 - jaw clicks;
 - fin or tail slaps;
 - visible penises;
 - aggressive behaviour such as repeated tail slaps;
 - belly to belly contact;
 - female swimming upside down and pursued by males;

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- flanking behaviour observed, being 3 or more dolphins in close contact side-by-side exhibiting increased surface activity.
34. The permit holder must ensure that if a dolphin swim has commenced and signs of mating are detected—
 - i. all persons involved in the whale swim immediately reboard the tour vessel; and
 - ii. the tour vessel remains in neutral gear until the dolphin mating activity is at least 100 metres from the vessel.
 35. The permit holder must conduct no more than one dolphin swim for each approach within the caution zone of a dolphin.
 36. The permit holder must ensure that a mermaid line is placed in the water before any person enters the water from the tour vessel.
 37. The permit holder must ensure that any person on the vessel or in participating in a dolphin swim must not make or cause to be made any loud or sudden noise.
 38. The permit holder must ensure that any person who takes part in a whale swim tour from the tour vessel, who is not the permit holder or an employee of the permit holder, holds onto the mermaid line at all times while each person is in the water.
 39. The permit holder must remain within 10 metres of the mermaid line and must not approach a dolphin from head on, from directly behind or from above or from underneath.
 40. The permit holder must ensure that an employee of the permit holder, while in the water for any purpose must -
 - i. remain within 10 metres of the mermaid line;
 - ii. not approach a dolphin from head on or from directly behind; and
 - iii. not approach a dolphin from above or from underneath.
 41. The permit holder must ensure that the tour vessel is not repositioned during a dolphin swim. ♦
 42. The permit holder must ensure that the tour vessel is in a neutral gear at all times during a dolphin swim except where it is necessary to avoid damage or prevent further damage to person or property. ♦
 43. The permit holder must not tow swimmers during a dolphin swim. ♦
 44. The permit holder must not enter the water from the tour vessel at a distance of less than 30 metres from a whale, the permit holder must ensure that no person enters the water from the tour vessel;
 45. The permit holder must ensure that no more than 10 persons, not including the permit holder or an employee of the permit holder, participate in a dolphin swim at any one time.
 46. The permit holder must not attempt to attract or herd a dolphin towards the tour vessel or a person.
 47. The permit holder must ensure than an employee of the permit holder does not attempt to attract or herd a dolphin towards the vessel or a person.
 48. The permit holder must ensure that a person who participates in a whale swim from the tour vessel does not use underwater breathing equipment other than a snorkel while the person is in the water.
 49. The permit holder must ensure that at the end of a whale swim, the mermaid line is retrieved immediately, and the tour vessel withdraws outside the caution zone of the dolphin.

♦ Condition does not apply in an emergency if human lives are threatened

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Trip returns

50. The permit holder must keep a monthly return in the form provided.
51. The permit holder must ensure that, for each tour conducted, the following information is recorded—
 - i. the name of the tour supervisor on the tour;
 - ii. the number of persons, other than the permit holder and any employee of the permit holder on the tour
 - iii. the number of persons, other than the permit holder and any employee of the permit holder, on the tour who participated in a dolphin swim during that tour
 - iv. the date and time of day the tour commenced and finished
 - v. the time of day for each instance that the vessel entered and left the caution zone of a whale
 - vi. the time of day that the dolphin swim commenced and finished
 - vii. the location of the dolphin swim
 - viii. the location of any whales sighted
 - ix. the species and number of whales sighted
 - x. any other information required by the Secretary.

Additional conditions

52. The permit holder agrees to provide the Secretary with a perpetual non-exclusive paid up license (including a right to sub-license) to use trip return data required under this permit for whatever purpose the Secretary sees fit.
53. The permit holder shall carry an operational range finder and global positioning system (GPS) during all activities authorised under this Permit.
54. The permit holder must demonstrate continuous use of the permit to conduct dolphin swim tours (excluding seasonal closures). Failure to conduct tours over an extended period may form a basis for cancellation of the permit.
55. This permit only applies to vessels nominated on this permit.
56. This permit is not transferable.
57. Permit Holders must when requested by the Secretary, allow an observer or researcher nominated by the Secretary on board tours to monitor adherence to permit conditions and to monitor the effects tour activities may have on dolphins.

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Attachment 3 – Insurance, release and indemnity

If your application is successful, you will be required to comply with the following insurance, release and indemnity provisions.

IN THIS ATTACHMENT:

“Insured” means the Permit Holder, including the Permit Holder’s officers, employees, agents, contractors, subcontractors, invitees and their successors.

“Other Relevant Parties” means the Minister for Energy, Environment and Climate Change, Minister for Planning, Minister for Water, the Secretary to the Department of Environment, Land, Water and Planning, Parks Victoria, the Director of National Parks, the Minister for Ports, Melbourne Water Corporation, and any other body delegating its powers to the Conservation Regulator.

“Permit Holder” means the applicant for the permit specified in the permit application form.

“Term” means the period of operation of the permit.

“Site/s” means the Port Phillip Bay Whale (Dolphin) Swim Tour Area as proclaimed by the Wildlife (Port Phillip Bay Whale (Dolphin) Swim Tour Area) Order 2020 or any Order made under section 83F of the Wildlife Act that replaces this order.

1. INSURANCE

- 1.1 The Permit Holder must effect and maintain throughout the Term with an insurer approved by the Australian Prudential Regulation Authority (APRA) which approval shall not be unreasonably withheld:
 - a. a public, and if relevant, products liability insurance policy for not less than \$10 million (or any greater amount required by the Conservation Regulator) in respect of any single claim arising out of the activities of the Insured, covering all third party claims arising out of:
 - i. loss, including financial loss, destruction or damage to real or personal property and ensuing loss of use of that property;
 - ii. death, injury to, or disease of persons; and
 - b. an employers’ liability and workers’ compensation policy which covers any damage, loss or liability suffered or incurred by any person engaged by the Permit Holder arising:
 - i. by virtue of any statute relating to workers’ or accident compensation or employers’ liability; or
 - ii. at common law, such policies referred to collectively as “the Policy”.
- 1.2 The Permit Holder must effect and maintain the Policy in the name of the Insured, and noting the interests of the Other Relevant Parties.
- 1.3 The Permit Holder must ensure that the Policy contains provisions under which the Conservation Regulator is to be notified of any changes to the Policy.
- 1.4 The Permit Holder must provide the Conservation Regulator with:
 - a. a certificate of currency for the Policy which clearly confirms the requirements of the preceding clause 1.2:
 - i. prior to the Permit commencement date;
 - ii. at any other time upon request by the Conservation Regulator;
 - b. a copy of the Policy upon request by the Conservation Regulator. The Conservation Regulator shall have the right to insist on any amendments to the policy wording or limits as it reasonably requires.

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- 1.5 The Permit Holder must promptly notify the Conservation Regulator if:
 - a. an event occurs which may give rise to a claim under or prejudice the policy; or
 - b. the Policy is cancelled.
- 1.6 The Permit Holder must not do anything or allow anything to be done which may prejudice any insurance held in connection with the Site/s; or increase the premium payable for any insurance held in connection with the Site/s.
- 1.7 The Permit Holder must effect and maintain all other insurances in a manner and to such extent which is reasonable and customary for an organisation engaging in activities of the kind referred to and permitted by the Permit.
- 1.8 The Permit Holder shall deliver upon request to the Conservation Regulator copies of any policies required to be entered into by it pursuant to clause 1.7 and the Conservation Regulator shall have the right to insist on any amendments to the policy wording or limits as it reasonably requires.

2. RELEASE

- 2.1 The Permit Holder agrees that it:
 - a. occupies and uses the Site/s at its own risk;
 - b. has inspected the Site/s and is of the opinion that the Site/s is safe and suitable for the activities of the Permit Holder.
- 2.2 The Permit Holder releases the Conservation Regulator and Other Relevant Parties from:
 - a. all claims and demands resulting from any accident, damage, death or injury occurring at the Site/s or any other area used by the Permit Holder in connection with this Permit; and
 - b. all loss, cost, damage, liability or other detriment (whether direct or consequential) suffered or incurred by the Permit Holder,
 - c. In connection with the Permit Holder's occupation and use of the Site/s or other areas used in connection with this Permit or the cancellation, amendment or suspension of the Permit, except to the extent caused or contributed to by the negligence of the Conservation Regulator.
- 2.3 References in this clause 2.2 to the Permit Holder, the Conservation Regulator and the Other Relevant Parties include their respective officers, employees, agents, contractors, subcontractors, invitees and their successors and assigns.

3. INDEMNITY

- 3.1 The Permit Holder indemnifies and agrees to keep indemnified the Conservation Regulator and Other Relevant Parties against all actions, claims, demands, losses, damages, costs and expenses (whether direct or consequential) for which any of the Conservation Regulator or Other Relevant Parties is or may be or become liable concerning or in connection with:
 - a. the default of the Permit Holder under this Permit;
 - b. the Permit Holder's use of the Site/s or any other area used by the Permit Holder in connection with this Permit;
 - c. loss, damage, or injury to property or persons caused or contributed by the Permit Holder's act, omission, default or negligence, except to the extent caused or contributed to by the negligence of the Conservation Regulator.
- 3.2 References in clause 3.1 to the Permit Holder, the Conservation Regulator and the Other Relevant Parties include their respective officers, employees, agents, contractors, subcontractors and invitees.

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3.3 Clause 3.1 and 3.2 are intended to operate for the benefit of the Conservation Regulator and the Other Relevant Parties. However, if required by the Conservation Regulator or the Other Relevant Parties at any time after the execution of this Permit, the Permit Holder will enter into a separate deed of indemnity or release – which is applicable with the Other Relevant Parties in substantially the same terms as Clause 3.1 and 3.2.

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